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BREACH OF PROMISE TO MARRY—ILLNESS AND DISEASE AS A DEFENSE.—After P and D had been engaged to be married for a number of years D refused to marry P and she brought an action against him for breach of promise. D claimed that since the engagement P had become afflicted with a goitre and that physical and mental illness unfitted her for the marital relation. The trial court charged that P's illness, to constitute a defense, must be permanent and incurable. The appellate court *held* this error, that where disease or physical disability, rendering it unsafe or improper to marry, has developed in either party subsequent to the making of the contract, the other party will be required to wait a reasonable time for a cure to be effected and, if the disease proves to be of a permanent character, may refuse to carry out the contract. *Fellers* v. *Howe,* (Neb., 1921), 184 N. W. 122.

There are but few reported cases in which the ill health of the plaintiff has been urged by the defendant as a defense. In a case in which the plaintiff had become afflicted with a floating kidney rendering her nervous and physically weakened, it was held that if the defendant waited a reasonable time for the plaintiff to recover, and she did not, he was justified in breaking the engagement. *Travis* v. *Schnebly,* 68 Wash. 1. In that case the court said, "A man who has only agreed to marry a healthy woman should not be compelled to accept her as his wife should she become an invalid before marriage." But if the defendant knew of the plaintiff's ill health at the time the promise was made it is no defense. *Lemke* v. *Franzenburg,* 159 Iowa 466. Where the plaintiff has a disease of a character which makes her marriage to the defendant contrary to public policy or eugenics it is clearly a valid defense. *Kantzler* v. *Grant,* (syphilis), 2 Ill. App. 236; *Goddard* v. *Westcott,* (cancer), 82 Mich. 180; *Jefferson* v. *Paskell,* (tuberculosis), [1916] 1 K. B. 57. In such cases it has been held a defense even if the defendant knew of it at the time the contract was made. *Grover* v. *Zook,* (tuberculosis), 44 Wash. 489. Where the plaintiff has a physical impediment to marriage it has likewise been held a defense. *Gring* v. *Lerch,* 112 Pa. St. 244; *Edmonds* v. *Hughes,* 115 Ky. 561. As indicated in the principal case it is not necessary that the ailment of the plaintiff be incurable. *Gring* v. *Lerch, supra; Travis* v. *Schnebly, supra.* While it was not decided in the principal case, the court intimates that it would have considered the plaintiff's affliction and illness a bar to her action had it been established by the evidence. Such a holding would obviously go farther than the case in which the plaintiff's marriage would be contrary to eugenics, or where there exists a physical impediment. However, it finds support in *Travis* v. *Schnebly, supra,* and seems right on principle unless, of course, carried too far. The weight of authority holds that if the defendant, without fault on his part, has become afflicted after the making of the contract with a disease which renders his marriage contrary to public policy, it is a good defense to a suit for breach of promise. *Trammell* v. *Vaughan,* 158 Mo. 214; *Gardner* v. *Arnett,* 21 Ky. L. Rep. 1; *In re Oldfield's Estate,* 175 Iowa 118. See also 14 MICH. L. REV. 666.